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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1220

AMERICAN AIRLINES, INC.,

Petitioner,

—against—

ELIZABETH ANNA EGAN and JOHN H. SEITER, as Administrators of the Estate of EILEEN M. SEITER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, STATE OF NEW YORK

BRIEF FOR RESPONDENTS IN OPPOSITION

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Questions Presented for Review

1. Is the decision in *Lisi* v. *Alitalia-Linee Aeree Italiane, S.P.A.*, 370 F.2d 508, *aff'd*, U.S. controlling of the within petition?

2. Was the decedent's flight from Seattle to New York international transportation?

ARGUMENT

(1)

The argument made by the petitioner herein is virtually identical to that advanced by the petitioner in *Lisi* v. *Alitalia-Linee Aeree Italiane, S.P.A.*, 370 F. 2d 508, *aff'd*

U.S. . The affirmance of *Lisi* on March 26, 1968 mandates a dismissal of the within petition. The New York State Court of Appeals in the case at bar, citing *Lisi, supra,* dismissed the defense of the limitations of liability by reason of the alleged application of the Warsaw Convention. Petitioner argues that "if this court should reverse the *Lisi* decision the only manner in which petitioner's right to plead such defense can be preserved is by this Court." (Petition, p. 7). The fact that this court has affirmed the *Lisi* decision makes this petition moot and it, therefore, should be denied.

(2)

An additional argument for denying petitioner's writ is the fact that under the very terms of the Warsaw Convention, the flights from Seattle to New York were not "international transportation". The instant case deals with a break in international transportation by virtue of decedent's bus trip from Vancouver to Seattle. There is no legal precedent known to respondent which has ruled on the questions raised by the facts of this case as a result of said break in transportation.

The significance of said break is due to the fact that the Convention provides that international transportation performed by several successive air carriers is deemed to be "one undivided transportation" if it has been regarded by the parties as a "single operation" [Article 1, (3)]. Where there are successive air carriers, the intent of the parties is material to the question of whether or not the Convention applies. A consideration of the circumstances under which the decedent embarked upon her flights from Seattle to New York overwhelmingly demonstrates that she did not

intend said flights to constitute part "one undivided transportation" with her prior flights.

The decedent decided to take a bus from Vancouver to Seattle and to collect a refund for the unused portion of her ticket from the airline in Seattle. Although she possessed the same ticket originally issued, because the ticket clerk issued a refund instead of a new ticket, her contract of transportation had been modified and she was now under a contract covering domestic flights only. She had no reason to believe that she was still regarded as a passenger in international flight or that her remaining flights were in any way connected to her prior ones.

That decedent intended to treat her flights from Seattle to New York as separate and distinct from her previous flights is also indicated by her purchase of additional flight insurance from Seattle. Decedent had purchased round-trip flight insurance in New York prior to her initial departure. Probably, the purchase of the additional insurance was prompted by decedent's belief that her original round-trip flight insurance was no longer applicable due to the break in transportation resulting in the bus trip from Vancouver to Seattle.

Decedent's Chicago to New York flight was likewise not part of the "single operation" required by the Convention. This flight was undertaken by a different airline which was not provided for in the original contract and for which decedent was given a new ticket in exchange for her original ticket. The destination of the flights was changed from Idlewild Airport to LaGuardia. The only reasonable intention that can be attributed to the decedent as regards the nature of the Chicago to New York flight is that it was not

part of a "single operation" in connection with her previous flights.

The Court of Appeals dismissed this argument (App. C. p. 12a) upon the authority of the *Ross* v. *Pan American Airways,* 299 N.Y. 88 and *Block* v. *Air France,* 386 F.2d 323. However, the instant case is distinguished from *Ross,* which concerned itself solely with the question of delivery of the ticket. In *Ross,* the court held that no intent was necessary provided delivery of the ticket was effected within the meaning of Article (1)(2) of the Convention. The instant case concerns Article (1)(3) which makes express reference to the need for intent.

What constitutes a "single operation" has been construed by the court in *Fulmor* v. *United Air Lines,* F.Supp. (C.D.C. Utah, 1968). The decedent had secured a ticket for international transportation from Toronto-Montreal-New York City-Salt Lake City. The New York City to Salt Lake City leg of the ticket was open and did not designate any specific carrier. He arrived in New York City on November 7, 1965. After conducting some business in New York City, on November 11, 1965 his company secured a reservation for a flight on United Air Lines to Butte, Montana with a stop-over in Salt Lake City. Decedent died as a result of injuries sustained in a crash of said flight in Salt Lake City.

The court found that by virtue of decedent's stop-over in New York City decedent "had come to rest at a point within the United States on November 7, 1965". Thereafter his trip was divested of any international character. Said stop-over was deemed proof that the parties had not regarded the further flight as a "single operation" within the meaning of the Convention.

It is submitted that the instant case presents an even stronger argument for finding that the parties did not regard the Seattle to New York flight as part of a "single operation". Unlike *Fulmor,* Mrs. Seiter broke her transportation with the bus trip from Vancouver to Seattle. As in *Fulmor,* she had come to rest at a point within the United States. The remainder of her trip was devoid of any international character.

In addition to the requirement of intent, Article (1)(3) of the Convention requires that in order for a subsequent domestic flight to be subject to the Convention, the transportation be performed by "successive air carriers". In order for transportation to be performed by successive air carriers, such transportation is required to be consecutive without interruption or interval. Decedent's bus trip from Vancouver to Seattle constituted such an interruption. The next series of flights from Seattle to New York by successive air carriers were solely domestic in nature and hence, by the Convention's own terms, outside the scope thereof (H. Drion, "Limitations of Liability in International Air Law", Page 52, Note 4.)

CONCLUSION

It is respectfully submitted that this petition should be denied.

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